THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 723 of 2001
(Old No. 7050 of 1997)

Sudhir Kumar & another

Versus

State of others

Date of decision :- 03-08-05

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date :- 3rd August 2005 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the Judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Appl. No.723 of 2001
{Old No. 7050 of 1997}

1. Sudhir Kumar
   S/o Babu Singh
   R/o Sector 23 Raj Nagar
   District Ghaziabad
2. V.K. Chaudhary
   S/o Amar Singh
   R/o 20 Narvilla Road
   P.S. Kotwali, Dehradun ……Applicants

Versus

1. State of Uttaranchal
2. S.H.O., P.S. Kotwali Dehradun
3. S.S.P., Dehradun
4. Jagdish Chandra
   S/o Phool Chand
   R/o Park Road
   P.S. Kotwali Dehradun ……Respondents

Date:- 3rd August, 2005

Hon'ble J. C. S. Rawat, J.

1. Heard Sri K. S. Verma learned counsel for the applicants and Sri Anil Dabral learned counsel for the respondent No.4.

2. The petition under section 482 Cr.P.C. was filed for quashing the chargesheet in case crime No.449/1996 under section 120, 406, 506 I.P.C. pending before the Chief Judicial Magistrate, Dehradun.

3. The factual position in a nutshell is that the respondent No.4 lodged an FIR against the applicants at police station Kotwali, Dehradun on 12.6.1996 and the same was registered as case crime No.449/1996 under section 420 & 406 I.P.C. It has been alleged that on 18.11.1991 the applicant no.1 and Smt. Ram Murti W/o Jagdish Chandra made an agreement to purchase the land situated at 20 Nasivlla Road, Dehradun. The applicant No.2 was the witness of this agreement dated 18.11.1991. It was agreed between the parties that the

sale deed would be executed @ Rs.3,50,000/-. Out of which, an earnest money of Rs.1 lakh was paid to the applicant no.1 by the respondent No.4 on behalf of his wife. On one pretext or the other the applicants refused to execute the sale seed in favour of Smt. Ram Murti W/o Jagdish Chandra-respondent No.4. Thereafter, the matter was investigated and the Magistrate framed the charges against the applicants-accused under section 420, 406, 506 I.P.C. Feeling aggrieved by this, the present petition has been preferred.

4. The leaned counsel for the applicants contended that the dispute between the applicants and Smt. Ram Murti W/o Jagdish Chandra-respondent No.4 was purely of a civil nature arising out of contractual relationship with regard to commercial transaction. Even looking to the sworn statements and the notice, no case is made out to proceed against the applicants on the criminal side. The learned counsel for the respondent No.4 refuted the contention and contended that the respondent No.4 had ably proved before the court below that there is sufficient evidence against the applicants and the applicants had intention to cheat him. As such, the applicants had executed the agreement.

5. The learned counsel for the applicants further contended that the respondent No.4 has not paid the residuary amount of the agreement and as such the applicants did not perform their part. Therefore, the applicants are not liable for the criminal proceedings.

6. Before examining the respective contentions of the parties, I would like to discuss the legal position in this regard. Every breach of trust may not result in a penal offence of breach of trust unless there is evidence of mental act the fraudulent misappropriation. An act of breach of trust involves a civil law in respect of which

the person wrongs may seek his redressal for damages in civil court, but a breach of trust with mens rea, gives a right to criminal prosecution as well. In order to constitute an offence of a criminal breach of trust the essential ingredients are:-

(i) entrusting a person with property or with any dominion over property,

(ii) that person entrusted (a) dishonestly misappropriating or concerting that property to his own use; or (b) dishonestly using or disposing that property or willfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust or any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do commits 'criminal breach of trust'.

7. In order to constitute an offence of cheating the essential ingredients are:-

(i) There should be fraudulent or dishonest inducement of a person by deceiving him.

(ii) The person so deceived should be entrusted to deliver any property to any person or to consent that any person shall retain any property or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived,(iii) In case covered by the said act or omission causes or is likely to

cause damage or harm to that person in body, mind, reputation or property, is said to "cheating".

8. In determining the question, it has to be kept in mind that distinction between mere breach of contract and the offence of cheating is a very fine one. It depends upon the intention of the accused at the time of the inducement, which may be judged by the subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give right to the criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. That is the time when the offence is said to have been committed. Therefore, it is the intention or mens rea, which is the gist of the offence to hold a person guilty of cheating at the time of making the promise. From his mere failure to keep a promise subsequently such an intention at the beginning that is when he made the promise cannot be presumed. In the present case it is admitted that an agreement was executed by the applicants in favour of Smt. Ram Murti W/o Jagdish Chandra-respondent No.4 and a sum of Rs.1,50,000/- was given at the time of agreement to the applicants. It is also on record that the parties entered into an agreement to sell the land situated at 20 Nasivlla Road, Dehradun and the property in dispute was agreed to be sold to the proposed vendees @ Rs.3,50,000/-. Only a sum of Rs.1,50,000/- has been paid by the respondent No.4. From the material that was placed before the court below even prima-facie it cannot be said that there was any conspiracy or there was any intention on the part of the applicants. If the applicants have committed any breach of agreement it is open to the complainant to seek redressal in a competent court

of forum to recover the damages if permissible in law in case he has sustained any loss. In order to constitute an offence of cheating the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise to show that he had committed an act of cheating. Looking to the complaint and other relevant documents and the grievance made by the complainant and having regard to the agreement it is clear that the dispute and grievance has arisen out of the agreement. As such, I find that this is purely a case of civil nature and there is no mens rea on the part of the applicants.

9. In view of the foregoing discussion, I find that the cognizance in case crime No.449/1996 under section 420, 406, 506 I.P.C. pending before the Chief Judicial Magistrate, Dehradun is liable to be quashed and the petition is liable to be allowed.

10. The petition is allowed and the chargesheet in case crime No.449/1996 under section 420, 406, 506 I.P.C. pending before the Chief Judicial Magistrate, Dehradun is quashed.

(J. C. S. Rawat, J.)

Dated 03.08.2005

LSR